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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/807,237      | 03/24/2004  | Michael Y. Young     | 151877              | 4516             |

7590 08/12/2005

ANDREWS KURTH LLP  
Intellectual Property Department  
Suite 300  
1701 Pennsylvania Avenue, N.W.  
Washington, DC 20006

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| EXAMINER |
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MCELHENY JR, DONALD E

|          |              |
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| ART UNIT | PAPER NUMBER |
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2857

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/807,237       | <b>Applicant(s)</b><br>YOUNG ET AL. |  |
|                              | <b>Examiner</b><br>Donald E. McElheny, Jr. | <b>Art Unit</b><br>2857             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/24/07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/19/04</u> . | 6) <input type="checkbox"/> Other: ____  |

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1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 27 and 31 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. These claims call for specific algorithms criteria which, by its nature of being claimed, is critical or essential to the practice of the invention, but what these algorithms or required claimed feature criteria consist of is not included in the claim(s) nor is found in the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 27 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

See the remarks for above paragraph 2. These claims are indefinite for not particularly pointing out to an enabling degree as to the exact requirements the claimed features allude to, but rather point to other sources of material.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over either of the Beverina et al. publications (2001/0027389 A1; 2001/0027388 A1) in view of Orr et al. (5808916).

The Beverina et al. published applications teach the gist of the invention of monitoring environmental conditions (simulated or real world monitored), risk analysis of that data and its effect on human safety and health concerns, including terrorists attacked related and contaminants related, and through an interactive 3D display system allows the user to access desired regions of the view and mapped areas, and other details on options of communications and graphic presentation modes for data transfer. What is lacking is a specific mention that the generated reports to users may include a "remediation module" that provides information for cleaning up contaminants.

Orr et al. teach an environmental monitoring system with similar concerns and motivations as Beverina et al., but teaches the preference of real time real world data instead of modeled or database sourced data of the real world. They teach that the

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various information may be transported over a national information highway (i.e. synonymous with the term Internet). Orr et al. teach specifically that remediation options may be presented to the user to assist in their decision process of how to proceed in a real world situation where environmental contamination has occurred, and for complying with meeting various regulatory agency requirements. Thus the inclusion of remediation courses of action, as well as their inherent equipment (i.e. "technology") that would be used, would have been obvious to incorporate into the Beverina et al. system since both references are concerned with environmental contamination site scenarios, their effects on human safety, and presenting data to the user for consideration in resolution of such matters. Variations on the modification or selection of data types, such as the user defining a sampling period of data (e.g. claim 6), or the various criteria and goals for rating or assessing health hazard risks, are deemed of what was already well known in the regulatory arts required by EPA and/or other agencies and thus what one of ordinary skill in the art would have had to comply with in conjunction with that dictated by their own environmental site scenario, and thus do not involve the concept of invention. Merely transforming a regulatory requirement into electronic format as software does not involve the concept of invention but instead merely data conversion an ordinary skilled software programmer would routinely perform. Thus the variations in claims such as 14-17, 19, 20, 22-31, 40, 53-55, 69, etc., are also deemed met by and within such standards requirements and teachings of the prior art.

8. Other prior art is cited of particular relevance and meeting the various claimed features and concepts.

Emphasis of the obviousness of the claimed variations in health and environmental risk analysis for meeting various agencies regulatory requirements, such as required by the EPA, is further evidenced by Zimmers et al. which also teach an environmental monitoring system and alert notification of dangers relating to health or safety conditions. While Zimmers et al. lack details of the user interactive display, they teach that risk analysis is required by such companies in such businesses affecting the environment and that their monitoring systems must meet and include the EPA agency's criteria, just as applicants' own written specification also state and admit. They teach various types of health and hazard criteria that may be taken into such environmental assessment analysis and the types of considerations and options that may then be considered, and remediation activities. Thus this reference discusses more details and options relating to regulatory requirements and government standards. Zimmers et al. also teach that any type of real world data may be monitored, and interconnected by any type of communications system and network, including the use of the Internet, and variations in the distribution of that data and its access.

Other prior art cited teaches various emergency or environmental monitoring and response systems.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald McElheny, Jr. whose telephone number is 571-

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272-2218. The examiner can normally be reached on Monday-Thursday from 7:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoff Marc, can be reached on weekdays at telephone number 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald E. McElhenry, Jr.  
Primary Examiner  
Art Unit 2857